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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

TRANSCONTINENTAL GAS PIPE : **DOCKET NO. 2:07 CV 2165**
LINE CORPORATION

VS. : **JUDGE MINALDI**

APPROXIMATELY 80 ACRES OF : **MAGISTRATE JUDGE KAY**
LAND IN CALCASIEU PARISH,
LOUISIANA, STREAM FAMILY
LIMITED PARTNERSHIP AND THE
OPAL GRAY TRUST

MEMORANDUM ORDER

Before the Court is a Motion in Limine to Exclude Deposition Testimony of Nancy McCracken (hereinafter "McCracken"), [doc. 20], filed by the defendants, Approximately 80 Acres of Land in Calcasieu Parish, the Stream Family Limited Partnership, and the Opal Gray Trust (hereinafter "the defendants"). Pursuant to FED. R. CIV. P. 32(a)(4)(B),

A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds: that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition.

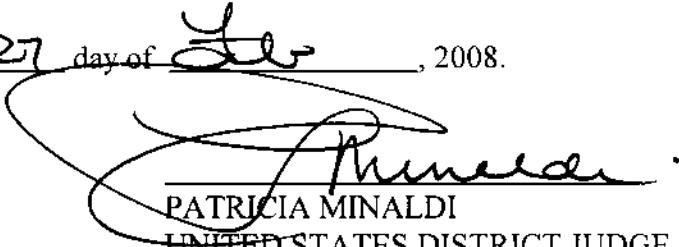
The defendants do not dispute that McCracken will be more than 100 miles from Lake Charles, Louisiana, on February 28, 2008, the date of the preliminary injunction hearing. The defendants request that this Court exercise its "broad discretion" and exclude McCracken's deposition because McCracken is the sole witness with any knowledge of this matter, and admitting her deposition would result in fundamental unfairness to them. The defendants also argue that this Court will be unable to assess McCracken's credibility if she does not testify. Furthermore, the

defendants argue that they were unprepared to cross-examine McCracken at her first deposition because the deposition was set with less than two days of notice.

After considering the defendants' motion, this Court finds that because FED. R. CIV. P. 32 (a)(4)(B) clearly permits the admissibility of McCracken's testimony, and this Court declines to exercise its discretion to exclude McCracken's deposition, the Motion is denied; accordingly,

IT IS ORDERED that the Motion in Limine to Exclude Deposition Testimony of Nancy McCracken, [doc. 20], is hereby DENIED.

Lake Charles, Louisiana, this 27 day of July, 2008.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE